

In the Matter of the Arbitration  
Between

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International Brotherhood of Teamsters	)	FMCS Case No.: 05-53156
Local 890,	)	
And	)	Arbitrator's Opinion and Award
Lideres Campensinas, Inc.	)	
	)	Joseph J. Woodford, Arbitrator
Issue: Termination-Raquel Sotelo	)	
	)	September 16, 2005
	)	
	)	

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Procedural Background

On November 16, 2004, the Organization of Farmworker Women Leaders in California, Inc. (Employer) terminated Raquel Sotelo (Grievant) for insubordination and communicating with the Board of Directors without authorization (UX 3). By letter dated November 23, 2004, Fritz Conle, Union Representative, challenged the Grievant's termination and that of another employee, Laura Caballero. This initiated the grievance procedure set forth in Article 26 of the Collective Bargaining Agreement (CBA). By letter dated December 16, 2004, Conle informed the Employer that the termination of Grievant was not done pursuant to the requirements of sections 27.1 and 27.2 of the CBA and requested additional information (UX 5). On January 6, 2005, Jonathan Judge, Attorney at Law, answered Conle's letter on behalf of the Employer (UX 6). The Employer and Union were unable to settle the grievance. Using the services of the Federal Mediation and Conciliation Service, Joseph J. Woodford was selected by the Parties as Arbitrator. On July 11 and 22, 2005, in Valencia, California, the arbitration hearing was held. The hearing was conducted in accordance with Article 26 of the March 1, 2003, through February 28, 2007 Collective Bargaining Contract (Contract or UX 2).

Fritz Conle, Union Representative, represented the Grievant. Jonathan Judge, Attorney at Law, represented the Employer. Other persons present during the hearing included: the Grievant, Raquel Sotelo, and Mily Trevino-Sauceda, Employer's Executive Director. Alicia Ernard, Certified Spanish Language Court Interpreter, assisted the Grievant and witnesses. Also present was a certified shorthand reporter.

No jurisdictional issues were raised. Both the Employer and the Grievant were afforded a full and complete opportunity to be heard, present evidence, and examine and cross-examine witnesses. All witnesses testified under oath. The Parties agreed that they would mail their post hearing briefs on August 31, 2005. On September 9, 2005, the Arbitrator received the last brief, which was postmarked August 31, 2005.

### Issue For Arbitration

At the outset of the hearing the Union and Employer stipulated to the submission of the following issue:

Was the grievant terminated for just cause? If not, what is the remedy?

### Pertinent Contract Provisions

The Collective Bargaining Agreement between the Employer and the Union for March 1, 2003, through February 28, 2007 was received into evidence as Union exhibit 2. The pertinent provisions of union exhibit 2 include:

*“13.1 In the event the Employer establishes or changes Employer house rules; the Employer shall deliver a copy thereof to the Union within a reasonable time prior to the effective date of such rules.”*

*“27.1 The Employer shall have the sole right to discipline and discharge employees for just cause. No employee shall be disciplined or discharged except for just cause. The employer shall have the right to discharge any employee for insubordination, drunkenness, incompetence, failure to perform work as required, or failure to observe safety rules and regulations or employer's posted rules and regulations. However, any employee who feels that he has been unfairly discharged shall have the right, within ten (10) calendar days, to bring the matter as a Grievance. Failure to act in writing within ten (10) calendar days shall waive the grievance.”*

*“27.2 The Employer shall either at the time of discharge, or within seven (7) days after the discharge, furnish the employee with a written discharge notice stating the reason for the discharge, supervisor's name who discharged the employee, and the time and location of the offense. A copy of the discharge or termination notice shall be sent to the Union by fax or first class mail.”*

## Positions of the Parties

### Union

The Union contends that the rule prohibiting staff communication with Board members is invalid because it was not contained in Employer's Personnel Policy Manual (EX 2) and was not communicated to the Union as required by CBA 13.1. The Union also contends the Grievant's failure to obey an invalid order, based on a rule implemented in violation of the CBA, does not constitute insubordination. The Union further contends that rules prohibiting theft and violence in the workplace, whether written or unwritten, are well understood, including the consequences of immediate termination. Such is not the case with a rule prohibiting communication with Board members. In addition, Employer did not follow its own Personnel Policies because grievant was not provided with written warnings or evaluations prior to termination (EX 2 section X). Finally, the Union contends as a member of Lideres Campensinas and under National Labor Relations Act, the Grievant has a right to communicate with members of the Board of Directors. Therefore Grievant's termination was not for just cause.

### Employer

The Employer contends, the Grievant communicated repeatedly with members of the Board of Directors after repeated directives and warnings not to. Those directives were clear, reasonable and work related. Grievant's refusal to obey instructions given by her supervisor were knowing, willful and deliberate. She was aware of the consequences of violating those instructions and had time to correct her behavior. The Grievant's conduct constitutes insubordination, which is just cause for termination.

## Summary of Facts

The Employer is the Organization of Farmworker Women Leaders in California, Inc., which is known as Lideres Campensinas, founded by Mily Trevino in 1992. In 1996 Lideres Campensinas became a nonprofit corporation under Internal Revenue Service rule 501 (c). A 15 member Board of Directors governs Lideres Campesinas. Twelve geographical communities each select one director and one alternate, from farmworker women, to the Board of Directors. In addition, there are three at large members. The Board of Directors elects officers, including president, vice president, secretary, treasurer and two delegates, from the Board. They meet six times a year.

Lideres Campensinas receives funding via grants and donations from both government agencies and private foundations. Services and training are provided to farmworker women in leadership, domestic violence, labor conditions and other issues.

In 1997 the Board hired Trevino as Executive Director to oversee the organization. As Chief Executive Officer of Lideres Campensinas she hires, directs and fires staff. Trevino reports to the Board of Directors.

Trevino hired the Grievant in July 1997 as a trainee. At the time of her termination the Grievant was employed as Assistant Coordinator, which is a middle management position with supervisory responsibilities.

The Employer and the Union entered into their first collective bargaining agreement on March 1, 2003. Trevino and Conle negotiated that CBA. It is the master agreement for the Professional, Technical, Office and Community Service Employees represented by Teamsters Local Unions 890 and 912 and Salinas Valley/Monterey Bay Area Employers. A two page Letter of Understanding, specific to the Lideres Campensinas, supplements the CBA. (UX 2) During negotiations Trevino provided Conle with a copy of the Employer's Personnel Policy Manual, which contains the Employer's "house rules." (EX 2)

In April 2003 Trevino hired a Director of Finance, Marya Pezzano. In November 2003, Trevino terminated Pezzano. Grievant, Laura Caballero and Virginia Ortega did not agree with Trevino's decision.

Sometime around December 2003, Trevino commenced development of a succession plan for her position and sought funding from an outside source. It was a three-year plan that included training and other transitioning activities. Six employees, including the Grievant, selected to participate in the succession plan learned about it in December 2003. Trevino communicated the succession plan, including her planned retirement, by letter to the Board of Directors at the January 2004 Board of Directors meeting held in Coachella. The Grievant was present at that Board of Directors meeting.

Sometime in February 2004, the Employer conducted two days of training in Arvin. During the evening, following the formal meetings, several members of the Board of Directors met in Laura Caballero's hotel room and discussed the succession plan, budget situation, moving the office from Pomona and other issues before the Board of Directors. In particular, they discussed requirements to succeed Trevino and removing Trevino now as opposed to waiting three years for her to retire and that Caballero could take Trevino's position. The Grievant was not present at this meeting.

During a break, at a February 2004 staff meeting, the Grievant walked to a nearby store with a co-worker, Maria Reyes. During their walk the two discussed Trevino's pending retirement. The Grievant told Reyes it was very important to talk to and convince the ladies on the Board to hurry up and pressure the Director (Trevino) to leave. The Grievant told Reyes that they needed to (go) slow and very calmly until after the Convening.<sup>1</sup>

In late March or early April, there was a large gathering of people at Sandra Garcia's home in Tulare. At the time Sandra Garcia was a member of the Board of Directors. A number of Lideres Campesinas Board members were present. Some had traveled long distances, up to six hours to attend. During this larger gathering, which included a birthday party for Sandra Garcia's grandchildren, the Grievant and Caballero met with a number of Board members, including Eustolia Salpa, Rosa Ponce, Sandra Garcia and Teresa Avina. They talked about how to "get rid" of Trevino. They consulted the

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<sup>1</sup> The Convening or "*Convedencia*" is an organization-wide meeting scheduled for April 2004.

Employer's policies to determine how the Board could get Trevino out. The meeting was concealed from Trevino.

The succession plan was scheduled for further discussion in April 2004 at a Board of Directors retreat. Prior to that meeting Trevino learned that funding had seriously declined resulting in budget problems. The Board of Directors met on April 18, 2004 in Arvin expecting to discuss the succession plan. Trevino presented budget problems to the Board of Directors. Some Board members insisted on discussion of the transition plan. A closed session was called so the Board of directors could meet without Trevino present. During this closed session the Board discussed moving the office from Pomona to the Central Valley.

Following the Board of Director's meeting several Board members and staff met for dinner at a fast food restaurant in Bakersfield. The Grievant organized the hour to hour-and-a-half meeting. During dinner they talked about a plan to get Trevino out as Executive Director. The Grievant urged the Board members present, including Hermalinda Guzman, Sandra Garcia, Teresa Avina and Laura Gil, to fire Trevino. She also told the Board members present the financial situation presented at the Board of Directors meeting by Trevino was not true.

In late April 2004, Trevino met with supervisors, mid-management and management at the Employer's office in Pomona. The Grievant was present. By then Trevino was aware that some staff members were having discussions with Board members about the succession plan. Trevino told the staff not to get involved with the transition. That it was between her (Trevino) and the Board of Directors. The Grievant did not inform Trevino that staff and Board members were having discussion about her (Trevino's) transition plan.

On May 12, 2004, Rosa Ponce, Board President at the time, went to Maria Reyes' house. Ponce brought with her a notebook with eight questions, for the Board of Directors, in it. Ponce asked Reyes to type the questions. A question arose while Reyes was typing. Ponce telephoned Caballero for clarification. Reyes then completed the typing and printed out the questions. They then telephoned the Grievant and faxed her a copy. The Grievant instructed Ponce and Reyes to add a ninth question. The Grievant told Ponce and Reyes to use simple words so that document would not appear to have been written by a highly educated person, which would allow someone to conclude that somebody else was behind it (the questions). After making the changes Ponce called the Grievant to obtain Garcia's fax number. They faxed the questions to Garcia. Garcia added a question and faxed the document back to Ponce and Reyes. Reyes typed the additional question into the document and printed it out for Ponce. Ponce instructed Reyes to erase the document from her computer, which she did.

One evening following a June 2004 staff meeting, Trevino confronted Caballero about communicating with the Board. The Grievant was present during the discussion. Caballero denied communicating with Board members. Trevino once again warned Caballero and the Grievant about communicating with the Board members.

Immediately following a June or July staff meeting in Pomona, the Grievant met with several coworkers behind closed doors. The Grievant told the others that it was important to organize the Board because the Board had the power to get rid of Trevino. The Grievant said, “ We have to be very careful and very astute how we’re going to do this with the ladies (Board members) so we do not appear to be involved as employees in this.” (Tran. vol. I page 147)

Trevino continued to receive information that some staff members were in discussions with Board members about her transition out of the organization. During the second week of August 2004, at a staff meeting she specifically addressed the problem. Trevino gave specific examples of issues that staff could discuss with Board members and issues they could not discuss. Staff was told the Board and organization should be directed to her (Trevino). The Grievant was in attendance at the staff meeting.

After the August 2004 staff meeting, Trevino called a special meeting with coordinators and assistant coordinators. She confronted those present about communication with members of the Board of Directors on board issues and the transition plan. All those present, including the Grievant, denied being involved. Trevino again was specific in instructing those present on permissible and impermissible communications with Board members. Again Trevino gave examples of permissible and impermissible communications with Board members.

On or about August 23, 2004, Trevino again received information that staff was meeting with Board members on Board issues. During lunch break Trevino took a walk with Maria Reyes. During that walk, Trevino inquired about Caballero meeting with Board members. Reyes became nervous and didn’t want to talk. Trevino pressed Reyes who confirmed that Caballero was telephoning Board members and talking to the Board President.

Trevino set up a meeting the next day. Those present included Ramona Felix, Lorena Dominguez, Reyes, Trevino. Unaware that the Grievant was involved in communications with Board members Trevino asked the Grievant attend. When told that the purpose of the meeting was for Felix and Reyes to discuss their observations of improper staff communication with Board members the Grievant refused to stay. The Grievant told Felix and Reyes that they needed to be very careful in what they were about to say because they could involve and hurt other people. Trevino told the Grievant she needed to stay and listen. The Grievant left the meeting.

Later Trevino met with the Grievant and asked her what was going on. The Grievant did not respond.

Laura Caballero requested a meeting with Trevino. The meeting was held in August 2004 with Grizelle Apobaca, Organizational Development Consultant, present as mediator. Caballero brought the Grievant as her union representative. Again Trevino expressed her concerns that staff members, including Caballero, were having conversations with Board

members about Board issues, such as the transition and Board elections. Trevino told them not to get involved. There was discussion, including examples of permissible and impermissible discussions with members of the Board of Directors. Those present were told, "if they met with Board Members to talk about organizational issues, specifically, the transition, that they could be terminated." The Grievant was an active participant in those discussions.

During its November 14, 2004 meeting the Board of Directors convened in a closed session to discuss Garcia and Ponce meeting in secret and discussing with staff the succession plan, budget and other Board issues. During the closed session the two Board members, and other Board members, admitted having the discussions with Caballero and the Grievant. The Board of Directors voted to punish two offending Board members. Following the Board of Directors meeting Trevino discussed termination of Grievant and Caballero with the President and Vice President of Lideres Campensinas.

Caballero was terminated on November 15, 2004. The next day, November 16, 2004 the Grievant was terminated.

### Opinion

The stipulated issues to be resolved in this arbitration are: was the grievant terminated for just cause and if not, what is the remedy? The Arbitrator finds the termination of the Grievant was for just cause and therefore denies the grievance. The Arbitrators reasoning follows.

It is well established in labor arbitration that where, as in the present case, an employer's right to terminate an employee is limited by the requirement that the action be for just cause, the employer has the burden of proving the termination of the employee was for just cause. Therefore the Employer had the burden of persuading the Arbitrator that termination of the Grievant was for just cause. The Employer has met this burden.

"Just cause" is a term of art in collective bargaining agreements. Just cause consists of a number of substantive and procedural elements. Primary among its substantive elements is the existence of sufficient proof that the employee engaged in the conduct for which he or she was terminated. Other elements include a valid rule or order that reasonably relates to the orderly, efficient and safe operation of the employer's business, an employee knew or reasonably be expected to know ahead of time that engaging in the particular type of behavior will likely result in termination, the existence of a reasonable relationship between an employee's misconduct and the punishment imposed and a requirement that discipline be administered even-handedly, that is, that similarly situated employees be treated similarly and disparate treatment is avoided.

In the present case, the record leaves no doubt that the Grievant engaged in the conduct for which she was terminated. The Grievant repeatedly met with or otherwise communicated with members of the Employer's Board of Directors in a clandestine effort to undermine her supervisor, Trevino, in order to "get rid" of her. Those secret meetings

and communications took place over several months from February through August 2004. They ultimately came to the attention of Trevino who repeatedly directed the Grievant and others not to communicate with Board members on the transition plan and other organizational issues before the Board of Directors.

The Union asserts the rule prohibiting staff from communicating with Board members on organizational issues before the Board of Directors is invalid. The Union claims the rule at issue is a new rule. 13.1 of the CBA requires, *"In the event the Employer establishes or changes Employer house rules; the Employer shall deliver a copy thereof to the Union within a reasonable time prior to the effective date of such rules."* The rule, including other rules such as theft of employer property and violence in the workplace, is not found in the Employer's Personnel Policy Manual. Grizelle Apodaca testified that in 2002 she conducted training entitled "Tomando Posesion" to targeted staff, including the Grievant. Various organizational management issues were incorporated in "Tomando Posesion", including protocols for communication between staff and Board members. That such communication to Board members must go through the Executive Director. Thus the rule, which is unwritten, existed prior to the CBA.

The Employer asserts the Grievant was insubordinate by communicating repeatedly with members of the Board members after repeated directives and warnings not to. In April, June and several times in August the Grievant was instructed by Trevino not to discuss issues before the Board of Directors, including the succession plan, with Board members. At the time Trevino was Executive Director and Grievant's supervisor. Thus Trevino had the authority to give the order or directive. The instructions were clear and included examples of permissible and prohibited communications with Board members. However, the Grievant continued her clandestine communication with Board members throughout April, June and August 2004.

The Grievant knew the consequences for her conduct. She had received training from Apodaca in 2002, where the disciplinary consequences were communicated. Additionally, Trevino had informed the staff, including Grievant, they could be terminated for discussing Board issues with Board members. Yet, Grievant continued to communicate on the transition plan and, other organizational matters, with Board members.

The Grievant had ample opportunity to correct her insubordinate behavior. As early as April 2004, Trevino had informed the Grievant and other staff not to discuss the succession plan with Board members. Trevino gave additional oral directives in June and August 2004. Rather than comply with her supervisors directives, the Grievant chose to continue talking to Board members about the transition plan and other prohibited subjects.

The Directive was reasonably related to the orderly, efficient and safe operation of the Employer's business. The discussions with Board members undermined Trevino's authority as Chief Executive of Lideres Campensinas. This caused conflict between the



Board of Directors and Trevino as evidence by the April 2004 Board of Directors meeting. Some Board members insisted on discussing the transition plan while Trevino was trying to explain a pending budget crises. The organization's chain of command was compromised causing disruption. This ultimately led to disciplinary action against two Board members, including sanctions and loss of voting rights.

The Union contends the Grievant had no obligation to obey an invalid rule or order. It is a well-established principle of labor arbitration, that employees must obey management's orders, even if believed to violate the contract, and then use the grievance procedure for relief. An exception to this "obey now, grieve later" doctrine exists where obedience exposes the employee to immanent risk of injury or death. Additionally, the employer cannot order an employee to commit a crime. Neither exception is present in this case. Thus, the Grievant should have used the grievance procedure if she thought the rule or order was invalid.

The Union contends the Employer's Personnel Policy Manual requires progressive discipline, including written warnings and evaluations prior to termination. Progressive discipline<sup>2</sup> is a general system of escalating disciplinary penalties applied prior to termination. Typically progressive discipline will include oral warnings, written warnings and short suspensions without pay prior to termination for repeated misconduct or poor performance. The pertinent provision, which is found on page 16 reads, "*Involuntary termination should be preceded by verbal and written notice unless the offense is so serious that requires immediate involuntary termination.*" The Manual is silent as to whether or not insubordination is a serious offense justifying immediate involuntary termination. 27.1 of the CBA, which does not require progressive discipline, gives the Employer the right to discharge any employee for insubordination among other offenses. This leaves the Employer with discretion in determining the seriousness of the misconduct and if a written warning is appropriate prior to termination.

The Union contends the Grievant, as a member of Lideres Campesinas, has a right to communicate issues and concerns to her area representative on the Board of Directors. The record shows the Grievant discussed her concerns on issues such as termination of the Finance Director, Trevino's transition plan, budget and finance with more than just her representative on the Board of Directors. These discussions included Eustolia Salpa, Sandra Garcia, Rosa Ponce, Laura Gil and Teresa Avina. In any event, when the Grievant became an Employee of Lideres Campesinas her relationship with the organization changed. As an employee, the Grievant is governed by the CBA, personnel policies and the written and unwritten rules of the workplace. It is this employment relationship that is the subject of this arbitration.

The Union also contends, the Grievant's conduct is a protected activity under the National Labor Relations Act (NLRA). That the Grievant was discussing matters affecting wages, hours and other terms and conditions of employment. The Arbitrators authority is limited by the terms of the CBA and the issues submitted by the Parties. Redress of alleged violations of external law properly resides in another forum.

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<sup>2</sup> The term progressive discipline does not appear in the Personnel Policy Manual.

As previously discussed, just cause includes a requirement that the employer's discipline of the employee is even-handed. The similarly situated employee, Caballero, was also terminated. There was no evidence of disparate treatment. Thus the Arbitrator finds the Grievant's discipline was administered even-handedly.

Finally, to determine whether the Grievant's termination was supported by just cause, the Arbitrator must determine if Grievant's conduct warranted dismissal. But an arbitrator's discretion to substitute his or her judgment regarding the appropriate penalty for that of management is not unlimited. Rather, if an arbitrator is persuaded that the discipline imposed was within the bounds of reasonableness, he or she may not impose a lesser penalty. This is true even if the arbitrator would likely have imposed a different penalty. On the other hand, if an arbitrator is convinced the punishment imposed by the employer was beyond the bounds of reasonableness, he or she must conclude that the employer exceeded its managerial discretion and institute a lesser penalty. In reviewing the discipline imposed on the employee, an arbitrator must consider and weigh all relevant factors including the employee's length of employment, prior work record and seriousness of the misconduct. As discussed above, insubordination by the Grievant was repeated over several months. What made Grievant's conduct particularly egregious was the deceit and concealment.

During a meeting in late April 2004, Trevino confronts staff members, including the Grievant, concerning staff communication with Board members on the transition plan. The Grievant had an opportunity to come forward. She remained silent. On May 12, 2004, Grievant instructed Ponce and Reyes to disguise questions in simple language so when the Board confronted Trevino it would not appear that someone else had written them. When Trevino confronted Caballero, after a staff meeting in late June 2004, about communicating with Board members the Grievant again remained silent. Following a staff meeting in June or July 2004, Grievant secretly met with other staff about "getting rid" of Trevino and told them to be careful and astute so they do not appear to be involved as employees. In August 2004, when confronted by Trevino, Grievant denied involvement in communications with Board members on the transition plan and other organizational issues. In August 2004, Grievant refused to attend a meeting where Felix and Reyes were to discuss what they knew about the secret communications with Board members. As she left the meeting the Grievant warned Felix and Reyes to be very careful in what they were about to say. Later when Trevino asked Grievant what was going on, she would not respond. Clearly the Grievant was an active participant in a "*junta clandestina*."

Under the circumstances, the Arbitrator cannot conclude that the termination of the Grievant was so excessive a punishment as to be unreasonable and therefore beyond the Employer's discretion. Thus the termination of the Grievant was for just cause. Accordingly the grievance is denied.

### Award

Having heard testimony, read the transcripts and carefully reviewed the evidence and briefs in this case and in light of the above discussion, the Arbitrator finds as follows:

1. The Grievant was terminated for just cause.
2. The grievance is denied.

Dated: September 16, 2005 at Crestline, California

Joseph J. Woodford, Arbitrator